debts which the bank holds against the deceased? While the authorities are somewhat in conflict over this extension, and while the precise question involved has seldom been presented, the true rule seems to be that the death of the depositor and the appointment of an administrator makes no difference in the solution of the problem. This conclusion is supported by the following cases, allowing the set off, *Ford* v. *Thornton,* 3 Leigh (Va.) 695; *Knecht* v. *The United States Savings Institute,* 2 Mo. App. 566; *Mathewson* v. *The Strafford Bank,* 45 N. H. 108; *Camden National Bank* v. *Green,* 45 N. J. Eq. 346, 17 Atl. 689; as well as by *Appeal of The Farmers & Mechanics Bank,* 48 Pa. St. 57, which denied the set-off in a similar action. See also *Howze* v. *Davis,* 76 Ala. 381, where it was held that a legatee could not set off a legacy against a suit by an executor for a debt which the legatee owed the testator. In order to bring Tennessee in line with the more numerous decisions and make it accord with the statute involved in the principal case, the court decided that the statute, being declaratory only of the existing law, could not be narrowly construed; and while the statute only deals with matured obligations, it does not deny the right to an equitable set-off of an unmatured obligation against an insolvent estate, a right created by the Court of Chancery before the statutes.

EVIDENCE.—JUDICIAL NOTICE OF MULE'S KICKING PROPENSITY.—In an action for personal injury sustained by being kicked by a mule which he was driving for the defendant, plaintiff recovered a verdict and judgment. When kicked, the plaintiff was in the act of unhooking a "tail-chain" which was near the mule's heels. He struck the mule to make it go forward, as he had been instructed to do. The mule kicked. *Held,* on appeal, in reversing the judgment of the lower court, "The kicking propensity of the mule is a matter of common knowledge and has been the subject of comment from the earliest time. * * * An employee cannot court danger by inviting and provoking a mule to kick him, and then recover of the master for a consequent injury, on the ground that he is a bona fide cripple without notice. * * * It follows that the trial court should have directed a verdict in favor of the defendant." *Consolidation Coal Co.* v. *Pratt* (Ky. App. 1916), 184 S. W. 369.

Twice at least now, the Kentucky Court has held that it will take judicial notice of the traditional kicking propensity of the unfortunate mule. *Tolin* v. *Terrell,* 133 Ky. 210, 117 S. W. 290. The Missouri Court has also held that "the mule is a domestic animal, whose treacherous and vicious nature is so generally known that even courts may take notice of it." *Borden* v. *The Falk Co.,* 97 Mo. App. 566, 71 S. W. 478. Such a tradition there most certainly is, a tradition originally founded upon an actual propensity, but there may well be some doubt as to whether this propensity still exists as a matter of fact so as to be worthy of judicial notice.

EVIDENCE.—REHABILITATION AFTER IMPEACHMENT OF MORAL CHARACTER ON CROSS-EXAMINATION.—Plaintiff, called as a witness in his own behalf, on his cross-examination testified that he had been convicted of forgery and

sentenced to prison. He thereafter offered evidence of his general good reputation in the community in which he lived. This was excluded as incompetent on the ground that his reputation had not been impeached except by cross-examination. *Held,* that the exclusion was erroneous. *Derrick* v. *Wallace* (N. Y. 1916), 112 N. E. 440.

The holding in the instant case establishes the New York rule to be that an admission of conviction on cross-examination impeaches witness's moral character, and permits the calling of other witnesses to give evidence of the general reputation of the impeached witness for the purpose of rehabilitation. The decision is important in view of the fact that there seems to have been some doubt as to what the New York rule really was. The rule as announced in *People* v. *Rector,* 19 Wend. 569, would render admissible the evidence in the instant case. This rule was affirmed in *Carter* v. *People,* 2 Hill 317, and recognized in *People* v. *Hulse,* 3 Hill 309, but held not to be applicable to that case. In *People* v. *Gay,* 7 N. Y. 378, an admission by a witness on cross-examination that he had been admitted to bail on a charge of forgery was held not to render admissible evidence of his general good character. It was there said that *People* v. *Hulse* had in effect overruled the previous decisions of *People* v. *Rector* and *Carter* v. *People,* but this is clearly not the case, as is pointed out in the dissenting opinion of WILLIS, J., in *People* v. *Gay,* at p. 382. The decision in *People* v. *Gay* is in perfect accord with the rule as laid down in the early case of *People* v. *Rector,* nor is it in any way inconsistent with the decision in the instant case. A mere accusation of crime does not impeach one's moral character as does a conviction. There is a clear conflict in the cases as to the rule which should be applied in cases of impeachment of moral character by cross-examination. The authorities on both sides are collected, WIGMORE, § 1106, note. For a later case reviewing the authorities see *First National Bank of Bartlesville* v. *Blakeman,* 19 Okla, 106, 91 Pac. 868, 12 L. R. A. (N. S.) 364.

HUSBAND AND WIFE—LOSS OF CONSORTIUM.—Plaintiff's husband was severel ly injured and crippled for life through the negligence of the defendant. Plaintiff sues for the loss of her husband's society, companionship, affection and assistance caused by the injury. *Held,* (one justice dissenting), that the facts did not constitute a cause of action. *Smith* v. *Nicholas Bldg. Co.* (Ohio 1915), 112 N. E. 204.

At common law the husband had two causes of action for injury to his marital rights in which the loss of consortium formed the gist of the action: (1) Where the defendant alienated the affections of the wife, (*Heermance* v. *James,* 47 Barb. (N. Y.) 120; *Prettyman* v. *Williamson,* 1 Penn. (Del.) 224; *Hartpence* v. *Rodgers,* 143 Mo. 623, 635; *Rudd* v. *Rounds,* 64 Vt. 432; *Ireland* v. *Ward,* 51 Ore. 102); and (2) where the defendant injured the wife by negligent act, (*Guy* v. *Livesay,* Cro. Jac. 501; *Hyatt* v. *Adams,* 16 Mich. 180; *Sanford* v. *Augusta,* 32 Me. 536; *Hopkins* v. *Atlanta & St. Lawrence Ry.,* 36 N. H. 9; *Whitcomb* v. *Barre,* 37 Vt. 148; *Birmingham So. Ry. Co.,* v. *Lintner,* 141 Ala. 420; 3 BLACKSTONE, COM. *139, *140).